



## **Annual Internal Review**

### **ETHICS REVIEW COMMISSION**

**This report covers the time period of 1/1/2017 to 6/30/2018**

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**The Board/Commission mission statement is set forth in the following provisions of the City Code:**

#### **§ 2-1-145 - ETHICS REVIEW COMMISSION.**

The Ethics Review Commission has duties and responsibilities established by Chapter 2-2 (Campaign Finance) and Chapter 2-7 (Ethics and Financial Disclosure).

#### **§ 2-2-65 OTHER CONSIDERATIONS FOR CAMPAIGN CONTRACT.**

- (A) A candidate who signs a campaign contract must participate in a series of candidate forums, whether or not the candidate qualifies for funds.
- (B) The Ethics Review Commission shall produce not fewer than three forums for each contested race as follows:
  - (1) one forum must air on public access television; and
  - (2) other forums may be produced and made available to the public by radio, broadcast, publication on the Internet, or other means approved by the commission.
- (C) The City shall make recordings of audio or video forums available to the public at all branches of the City library.
- (D) The City may purchase advertising promoting the candidate forums.
- (E) The Ethics Review Commission shall establish equitable guidelines to coordinate and produce the candidate forums.

#### **§ 2-7-26 FUNCTIONS.**

The Ethics Review Commission has jurisdiction over this chapter, Section 2-1-24 (Conflict of Interest and Recusal), Chapter 2-2 (Campaign Finance), Chapter 4-8 (Regulation of Lobbyists), and Article III, Section 8, of the City Charter (Limits on campaign Contributions and Expenditures). The commission shall hear and rule on sworn complaints alleging violations of the provisions within the commission's

jurisdiction. The city manager shall provide funding for all necessary and reasonable functions of the commission in fulfilling its duties.

**§ 2-7-30 DUTIES.**

- (A) The Ethics Review Commission shall, in addition to its other duties:
  - (1) prescribe forms for reports, statements, notices, and other documents required by the provisions within the commission's jurisdiction;
  - (2) prepare and publish materials explaining the duties of individuals subject to the provisions within the commission's jurisdiction;
  - (3) accept and file any information voluntarily supplied that exceeds the requirements of the provisions within the commission's jurisdiction;
  - (4) preserve statements and reports filed with the commission for a period of five years from the date of receipt;
  - (5) review the provisions within the commission's jurisdiction and make appropriate recommendations to the city council concerning the provisions within the commission's jurisdiction, and perform an annual review and evaluation of the dollar limits established in Chapter 2-2 (Campaign Finance) and make recommendations to the city council as to those limits;
  - (6) conduct hearings in accordance with the provisions of this chapter and the commission's rules on sworn complaints alleging violations of the provisions within the commission's jurisdiction;
  - (7) schedule and oversee the forums among candidates in City elections provided for in Chapter 2-2 (Campaign Finance).
  
- (B) The commission may:
  - (1) prepare reports and studies to advance the purposes of the provisions within the commission's jurisdiction;
  - (2) request the city council and city manager to provide such assistance as it may require in the discharge of its duties; and
  - (3) review statements and reports filed under provisions within the commission's jurisdiction in order to obtain compliance with the provisions.

**1. Describe the board's actions supporting its mission during the previous calendar year. Address all elements of the board's mission statement as provided in the relevant sections of the City Code.**

The Ethics Review Commission engaged in the following activities during the review period:

January 2017

The Commission held a regular meeting on January 11, 2017.

During the meeting, the Commission approved the 2017 meeting schedule and approved revisions to Campaign Finance Form ATX 8.

March 2017

The Commission held a regular meeting on March 8, 2017.

Commissioner Thompson briefed the Commission on Council Member Pool's proposed amendments to City Code Chapter 2-2 (Campaign Finance), which relate to campaign contribution and expenditure restrictions in the City Charter that were being challenged in federal court. The Commission was briefed by city staff in regard to recent amendments to Chapter 2-7 (Ethics and Financial Disclosure) adopted by council in Ordinance No. 20170209-005. Additionally, the Commission approved amendments to its bylaws to incorporate recent amendments to City Code Chapter 2-7.

April 2017

The Commission held a regular meeting on April 12, 2017.

**Preliminary Hearing:** A preliminary hearing was held in regard to a complaint filed by Nathan Wiebe (City Auditor's Office) against Ashley Buchanan in regard to alleged violation of City Code Chapter 2-7 (Ethics and Financial Disclosure). On a vote of 9-0, the Commission determined that reasonable grounds exist to proceed to a final hearing. The Commission also voted to subpoena Don Pitts as a witness for the final hearing and addressed additional evidentiary matters.

**Working Groups:** Commissioner Thompson was added to the Campaign Finance Working Group and Commissioners Danburg and Holmes were added to the Chapter 2-7 Working Group. The subject matters of the Chapter 2-7 Working Group were expanded to include City Code Section 2-1-24 and the Commission's complaint form and hearing rules.

**Officer Elections:** Chair Einhorn was elected to another term as chair; Commission Harding was elected as vice-chair; and Commissioner Stratmann was elected to another term as Secretary.

Statement of Financial Information Forms and Complaint Forms: The Commission approved revisions to the Statement of Financial Information forms; adopted a Microsoft Word version of the Commission's complaint form; and adopted revisions to the fillable pdf version of the complaint form.

### May 2017

The Commission held a regular meeting on May 10, 2017.

**Final Hearing:** A final hearing was held in regard to the complaint by Nathan Wiebe (City Auditor's Office) against Ashley Buchanan in regard to alleged violation of City Code Chapter 2-7 (Ethics and Financial Disclosure). (Vice-Chair Harding and Commissioner Ohueri recused themselves from the hearing.) Witness Don Pitts failed to appear in response to a subpoena. The Commission dismissed the complaint after motions to find a violation failed to pass.

**Preliminary Hearing:** A preliminary hearing was held in regard to a complaint by Ross Wilson against Bryan King in regard to alleged violation of Chapter 2-7 (Ethics and Financial Disclosure). On a vote of 8-0, the Commission dismissed the complaint based on lack of reasonable grounds to proceed to a final hearing.

### August 2017

The Commission held a regular meeting on August 9, 2017.

#### Preliminary Hearings:

(1) The Commission held a preliminary hearing in regard to a complaint filed on April 25, 2017, by Nathan Wiebe (City Auditor's Office) against Margo Frasier alleging violation of City Code Chapter 2-7 (Ethics and Financial Disclosure). On a vote of 8-3, the Commission voted to proceed to final hearing. The Commission approved issuance of subpoenas to the City Auditor's Office for a generalized index of evidence related to the investigation of Ms. Frasier and the forensic image of the computer used by Ms. Frasier, which investigation was the basis for the complaint; and to direct Commission staff to make that information available to Ms. Frasier's counsel before the September 20, 2017 Commission meeting. The Commission also approved a motion requiring the City Auditor's Office to provide metadata related to its investigation of Ms. Frasier's activities within the statute of limitations period to Ms. Frasier's counsel and that each party have the opportunity to submit a report to the Commission analyzing the metadata.

(2) The Commission held a preliminary hearing to consider a complaint filed on July 17, 2017, by Nathan Wiebe against Isabel Aguilar-Lopez, which involved alleged violations of City Code Chapter 2-1 (City Boards) and City Code Chapter 2-7 (Ethics

and Financial Disclosure). On a unanimous vote, the Commission determined a violation had occurred based on the admission of Ms. Lopez-Aguilar. On a 6-4-1 vote, the Commission approved issuance of a letter of admonition requiring Ms. Lopez-Aguilar to comply with the Ethics Code going forward to avoid future violations.

#### October 2017

The Commission held a regular meeting on October 11, 2017.

**Jurisdictional Determination:** By unanimous vote, the Commission sustained the chair's initial determination that the Commission lacks jurisdiction over a complaint filed on August 3, 2017, by Abel Ochoa against Idara Bessard, alleging violation of City Code, Chapter 2-7 (Ethics and Financial Disclosure).

**Working Groups:** Proposed amendments to Article 6 (Anti-lobbying and Procurement) of City Code Chapter 2-7 (Ethics and Financial Disclosure) were referred to the Chapter 2-7 working group with direction to the working group to report back at the next Commission meeting. The issue of incidental use of city resources, as well as possible changes to sanctions and violations were assigned to the Chapter 2-7 working group. Commissioner Kahle was added to the Chapter 2-7 working group. Commissioner McCormick was elected as the sole member of the working group on 2018 Council Candidate forums.

**Subpoena – failure to appear:** The Commission approved authorization of the chair to refer for prosecution, by swearing a Municipal Court complaint against, Don Pitts for failure to appear in response to the subpoena served on him on April 26, 2017, which ordered him to appear and testify as a witness at the May 10, 2017 final hearing on the complaint against Ashley Buchanan. *See* City Code Section 2-7-99 (Offenses; Penalty).

#### November 2017

The commission held a special called meeting on November 1, 2017.

The Commission voted to approve the following-described proposed recommendations to amend Article 6 (Anti-lobbying and Procurement) of City Code Chapter 2-7 (Ethics and Financial Disclosure):

##### Recommendation No. 1

Restricted communication period to begin four (4) business days after the day a solicitation is issued for the purpose of discouraging undue influence and giving respondents time to address policy concerns.

Vote: 7-2

### Recommendation No. 2

Restricted communications period to end 60 days following Council authorization or when the contract is executed, whichever is sooner.

Vote: 9-0

### Recommendation No. 3

Accept working recommendation on enforcement, debarment and reporting obligation (adding Municipal Court to the option of third party due process).

Vote: 9-0

### Recommendation No. 4

Recommendation that Council work with staff and stakeholders on exploring implementation of the Model Procurement Rules of the American Bar Association or other best practices models.

Vote: 9-0

### Recommendation No. 5

Eliminate the proposed authority of the purchasing officer to consider “mitigating factors” in determining violations and instead authorize the appellate body to consider “mitigating factors” upon appeal.

Vote: 9-0

Preliminary Hearings: (1) The Commission convened a preliminary hearing under City Code Section 2-7-44 to consider a complaint filed on July 17, 2017, by Nathan Wiebe (City Auditor’s Office) against Clifford Gillard, which alleged violations of City Code Chapter 2-7 (Ethics and Financial Disclosure) and City Code Chapter 2-1 (City Boards). Based on admissions of the respondent, the Commission issue a letter of notification. (2) The Commission held a preliminary hearing to consider a complaint filed on July 17, 2017, by Nathan Wiebe (City Auditor’s Office) against Stefan Sasko, which alleged violation of City Code Chapter 2-7 (Ethics and Financial Disclosure). The Commission determined reasonable grounds exist to go forward with a final hearing.

The Commission considered additional witness and evidentiary issues under City Code Section 2-7-46 (Oaths and Requests for Information) relating to the final hearing on a complaint filed on April 25, 2017, by Nathan Wiebe (City Auditor’s Office) against Margo Frasier, which alleged violation of City Code Chapter 2-7 (Ethics and Financial Disclosure). On a 6-4 vote, the Commission approved a motion to subpoena everything in the index of evidence provided by the City Auditor’s Office without redactions. On a vote of 9-0-1, the Commission also approved

issuance of subpoenas to former city manager, Marc Ott, and former deputy city manager, Michael McDonald.

The Commission's 2018 regular meeting schedule was approved.

### January 2018

The Commission held a regular meeting on January 10, 2018.

**Jurisdictional Determination:** The Commission sustained the chair's initial determination that the Commission lacks jurisdiction over a complaint filed on December 20, 2017, by Sara Black against Brian Manley, which alleged violation of City Code, Chapter 2-7 (Ethics and Financial Disclosure).

**Final Hearing:** A final hearing was held by the Commission under City Code Section 2-7-44 to consider a complaint filed on July 17, 2017, by Nathan Wiebe against Stefan Sasko, which involved alleged violations of City Code Chapter 2-7 (Ethics and Financial Disclosure). On a unanimous vote, the Commission determined no violation occurred.

Potential council amendments to City Code Chapter 2-7 (Ethics and Financial Disclosure) related to the ERC's subpoena power were discussed.

### February 2018

The Commission held a regular meeting on February 7, 2018.

**Preliminary Hearing:** The Commission held a preliminary hearing on complaints filed on November 28, 2017, by Fred Lewis against Respondents, David J. Anderson, Leah Bojo, Amanda Brown, Peter Cesaro, Stephen Drenner, Laci Ehlers, David Hartman, Will Herring, Jeff Howard, John Joseph, Michele Lynch, Pamela Madere, Nikelle Meade, Steve Metcalfe, Mark Nathan, Julianne Nickells, Amanda Swor, Michael Whellan and Talley Williams, which alleged violations of City Code, Chapter 4-8 (Regulation of Lobbyists), specifically violation of Section 4-8-6 (A)(2) (Activity Reports). After the complainant acknowledged his request to withdraw the complaints based on the respondents' filing of corrected reports, the Commission voted unanimously in favor of dismissing the complaints.

**Candidate and Officeholder Brochure:** The Commission approved the Candidate and Officeholder Brochure for Campaign Finance with edits to provisions addressing time restrictions on candidate fund raising and the restrictions on the use of campaign contributions. The Commission considered but did not recommend changes to campaign finance contribution limits.

**Amendments to City Code Chapter 2-7 (Ethics and Financial Disclosure):** The Commission voted to recommend to Council amendments to Chapter 2-7 of the City

Code to authorize the Commission to dismiss complaints when withdrawn by the complainant. On a unanimous vote, the Commission voted to add subsection (i) to City Code Section 2-7-41 to provide that a complaint should be automatically dismissed when a complainant requested to withdraw a complaint.

Procedures for Commission meetings: The Commission advised city staff of its desire to have audio of each Ethics Review Commission meeting uploaded to the Commission's web page beginning in March of 2018.

### March 2018

The Commission held a regular meeting on March 21, 2018.

Final Hearing: The Commission held a final hearing under City Code Section 2-7-45 to consider a complaint filed on April 25, 2017, by Jason Hadavi, formerly Nathan Wiebe, (Office of the City Auditor), against Margo Frasier, which alleged one or more violations of City Code Chapter 2-7 (Ethics and Financial Disclosure). At the conclusion of the hearing on a vote of 7-0-2, the Commission dismissed the complaint and found that no violation occurred.

### April 2018

The Commission held a regular meeting on April 11, 2018.

The Chair and Vice Chair of the Charter Review Commission provided a briefing to, and answered questions of, the Ethics Review Commission in regard to draft recommendations of the Charter Review Commission.

### May 2018

The Commission held a regular meeting on May 9, 2018.

Officer Elections: Ben Stratmann was elected Chair; Dennis Speight was elected Vice Chair; and Luis Soberon was elected Secretary.

Charter Review Commission Working Group: Commissioners Thompson, Danburg, McCormick and Soberon were elected to a working group to consider and provide recommendations in regard to the final report and recommendations of the Charter Review Commission.

### June 2018

The Commission held a regular meeting on June 13, 2018.

Commissioner McCormick, city staff and the League of Women Voters gave a presentation to the Commission in regard to the schedule and location for city council candidate forums for the fall of 2018.

The Commission amended and adopted the report of its Charter Review Commission

Working Group to communicate the following concerns to Council in regard to the recommendations of the Charter Review Commission related to an independent ethics review Commission (IERC) and the “Democracy Dollars” program:

1. Selection and qualification of members to the proposed IERC:
  - (a) The City Auditor’s Office should not be involved in the selection process of members to the proposed independent ethics review commission (IERC).
  - (b) The proposed qualifications for IERC members should be loosened as the qualifications would result in a limited number of citizens who would be eligible to serve on the IERC.
2. The term of office of members to the proposed IERC: The five-year term length is too long, especially in light of the requirement that former members refrain from almost any political activity during their term and for two years after their term.
3. The cost of the proposed IERC and the “Democracy Dollars” program: The costs of the proposed IERC and the “Democracy Dollars” program and the source of the funds to satisfy these costs have not been adequately studied or substantiated.

**2. Determine if the board’s actions throughout the year comply with the mission statement.**

In regard to the reporting period (Jan. 2017-June 2018), the Ethics Review Commission’s activities complied with the Commission’s mission, functions and duties.

**3. List the board’s goals and objectives for the new calendar year (or next reporting period).**

The Ethics Review Commission will continue to meet its stated responsibilities as an independent ethics and compliance body, including but not limited to:

- holding preliminary and final hearings regarding complaints within the Commission’s jurisdiction;
- establishing rules of procedure for appeals of disqualifications under the anti-lobbying provisions of City Code Chapter 2-7, Article 6;
- sponsoring candidate forums for city council candidates in the fall of 2018;

- advising council in regard to recommendations of the Charter Review Commission in regard to the proposed independent ethics review commission and the proposed “Democracy for Dollars” program; and
- advising council in regard to proposed amendments to Article III, section 8 of the City Charter and City Code Chapter 2-2 (*Campaign Finance*) and Chapter 2-7 (*Ethics and Financial Disclosure*).